ORIGINAL

(4)

No. 00-8452

Supreme Court, U.S.
FILED
MAR 14 2001
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2000

DARYL RENARD ATKINS,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Virginia

REPLY BRIEF FOR PETITIONER

Charles E. Haden*
Suite B
2440 West Queen Street
Hampton, VA 23666
(757) 825-0022

* Counsel of Record

Robert E. Lee
VIRGINIA CAPITAL REPRESENTATION
RESOURCE CENTER
Suite 301
2421 Ivy Road
Charlottesville, VA 22903
(804) 817-2970

The Commonwealth does not dispute that this case presents a significant and recurring issue of importance to the administration of justice. Its reasons why certiorari nonetheless should be denied are disingenuous or without merit.

1. Atkins is not raising a state law issue. For purposes of this petition, Atkins assumes the Virginia Supreme Court correctly applied its own rules of evidence.

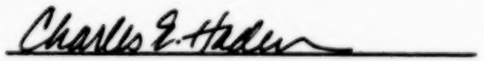
2. Atkins' federal constitutional claim is not defaulted for failure to make the identical argument below. "Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they make below." *Yee* v. *Escondido*, 503 U.S. 519, 534 (1992); accord *Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995).

3. Without inviting a citation for contempt, Atkins could not have taken the stand and even *attempted* to testify about the mitigating aspects of his statement to Investigator Lyons. The Commonwealth sought and obtained a ruling *in limine* specifically "order[ing] *Atkins and his counsel* 'to refrain from *any attempt*, during the re-sentencing proceeding, to inquire into, comment upon or argue any factual issue relative to [Atkins'] guilt.'" *Atkins v. Commonwealth*, 534 S.E.2d 312, 315 n.3 (Va. 2000) (emphases added), App. 20-21 n.3. Atkins tested the limits of this ruling by calling Investigator Lyons; he got his hand slapped for doing so. Having secured and enforced the broad benefit of the *in limine* ruling, it is disingenuous for the Commonwealth to argue that Atkins would have been exempt from that ruling if only he had tried to give testimony that, in the court's view, was a "comment upon . . . [a] factual issue relative to [Atkins'] guilt."

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,



Charles E. Haden*
Suite B
2440 West Queen Street
Hampton, VA 23666
(757) 825-0022

* Counsel of Record

Robert E. Lee
VIRGINIA CAPITAL REPRESENTATION
RESOURCE CENTER
Suite 301
2421 Ivy Road
Charlottesville, VA 22903
(804) 817-2970

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

DARYL RENARD ATKINS,
Petitioner-Appellant,

v.

COMMONWEALTH OF VIRGINIA
Respondent-Appellee.

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

---

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of this Court. I further certify that on March 14, 2001, I caused the foregoing Petition for a Writ of Certiorari and accompanying Appendix to be served by first-class mail, postage prepaid, on Pamela A. Rumpz, Esq., Assistant Attorney General, 900 East Main Street, Richmond, VA 23219.

Rob Lee

Charles E. Haden*
Suite B
2440 West Queen Street
Hampton, VA 23666
(757) 825-0022

* Counsel of Record

Robert E. Lee
VIRGINIA CAPITAL REPRESENTATION
RESOURCE CENTER
Suite 301
2421 Ivy Road
Charlottesville, VA 22903
(804) 817-2970

VIRGINIA CAPITAL REPRESENTATION
RESOURCE CENTER

2421 IVY ROAD, SUITE 301
CHARLOTTESVILLE, VIRGINIA 22903

(804) 817-2970 TELEPHONE
(804) 817-2972 FACSIMILE

March 14, 2001

Hon William K. Suter, Clerk
Supreme Court of the United States
One First Street NE
Washington, DC 20543

RECEIVED
HAND DELIVERED
MAR 14 200
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RE: Atkins v. Virginia, No. 00-8452

Dear Mr. Suter:

Enclosed for filing in the above-referenced matter, please find the original plus ten copies of Mr. Atkins' reply brief.

Yours truly,

Rob Lee

Robert E. Lee
Counsel for Petitioner

cc: Charles Haden, Esq.
Pamela A. Rumpz, Esq.